

SENATE BILL REPORT

SB 5404

As Reported By Senate Committee On:
Labor, Commerce & Trade, March 1, 1995

Title: An act relating to commercial real estate broker's liens.

Brief Description: Creating a lien for real estate brokers.

Sponsors: Senators Heavey, Deccio, Fraser, Newhouse, Kohl, Hale, Franklin, McCaslin, Palmer and Wojahn.

Brief History:

Committee Activity: Labor, Commerce & Trade: 2/9/95, 3/1/95 [DPS].

SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 5404 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pelz, Chair; Heavey, Vice Chair; Deccio, Franklin, Fraser, Hale, Newhouse, Palmer and Wojahn.

Staff: Erika Lim (786-7488)

Background: The amount of a real estate broker's compensation in a commercial transaction is generally agreed upon by the parties and memorialized in a contract or other written instrument.

Summary of Substitute Bill: A commercial real estate broker has a lien on the real property being sold or leased for the amount of compensation due, provided that the right to payment is included in a written document signed by the owner, the buyer, or the owner's or buyer's agent.

Filing and notification requirements to exercise the right to a commercial real estate broker's lien are established. A commercial real estate broker's lien is judicially foreclosed using the same procedures as those used in a mortgage foreclosure. The prevailing party in a lien foreclosure action is entitled to attorney fees, costs, and prejudgment interest. A commercial real estate broker's lien is subordinate to all prior recorded mortgages and liens.

Substitute Bill Compared to Original Bill: Language was added to address financing and compensation situations that commonly occur in commercial real estate transactions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Current law requires brokers to file lawsuits to seek commissions owed to them. This process can take months to resolve. Some commercial real estate transactions can take a lot of time and it is not fair that the broker may not be paid.

Testimony Against: Because this lien would be on real property which is about to be conveyed, it may interfere with the upcoming transaction. A buyer who has no contractual relationship with a broker and who owes the broker no money may have a lien on the newly-acquired property. Also, there are many people who facilitate a commercial real estate transaction, for example, brokers, appraisers, and consultants, but only brokers would be entitled to a lien.

Testified: Terri Hotvedt, WA Assn. of Realtors (pro); Ellen Dial, WA State Bar Assn. (con); Jim Carnell, WACAR (pro); Russ Segner, WACAR (pro); Dwight Bickel, WA Land Title Assn.; Jim Halstrom, Master Builders (con); David Cantu, WA Assn. of Realtors (pro); Bill Stegeman, J2 Company (pro).